IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1080 OF 2006

Raygond Sidhappa Jatrate
(since deceased) through LRs
1.Yergonda Raygonda Jatrate & Ors. .. Appellants.
Vs.
Shevantabai Ramu Chingale .. Respondent.

Mr.C.G.Gavnekar for the appellants.
Mr.V.B.Rajure for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 9TH JANUARY, 2007

P.C.:

. Heard learned counsel for the appellants and the respondent.

2. The concurrent findings recorded by the courts below are under challenge in the instant second appeal. The respondent has filed a suit for possession of suit property. The appellants claim independent tenancy in the suit property and in view thereof it appears that an issue of tenancy was framed by the trial Court and it was referred to the tenancy authorities under the provisions of B.T.& A.L. Act. The issue was answered in favour of the respondents holding them as tenants in the suit property and they were declared deemed purchaser under section 32-G of

the B.T.& A.L.Act. These proceedings were carried further and the order of tenancy authorities was ultimately confirmed by this court. It is against this backdrop Mr.Gavnekar, learned counsel for the appellants submitted that though 32-G proceedings were concluded against the appellants, neither 32-M certificate has yet been issued nor the respondents have paid the purchase price. He further submitted that in 1939, possession of the suit property was taken by the court of wards and original defendant no.1 - Raygonda, the predecessor of the appellants, had obtained possession of the suit property on the basis of the order passed by the court of wards. The application, according to Mr.Gavnekar, filed by the predecessor of respondents, namely, Appa for possession was rejected by the court of wards. Thereafter the appellants continued to be in possession of the suit property until filing of the suit without any disturbance. In view thereof Mr.Gavnekar submitted that the possession of the appellants became adverse and this aspect had not been considered and dealt with by the courts below in proper prespective. Insofar as the first submission that 32-M certificate has yet not been issued is concerned, is devoid of any merits since that will not have any effect on the rights of the respondents and hence that cannot be a basis for the appellants to

claim any right over the suit property. Insofar as next submission is concerned, in my opinion, the appeal court has dealt with the said aspect in proper prespective and has rightly rejected the contention that the possession of the appellants became adverse. I perused the pleadings. It is very clear that the appellants did not set up a plea of adverse possession over the suit property. Even if it is assumed that such a plea was set up, there is absolutely no material on record as observed in paragraph 19 of the judgment of the appeal court that the appellants had obtained possession of the suit lands from the court of wards on the basis of the order passed by the said court. Moreover, the other material such as documents at Exhibit-176, 177, 179 and 220 also do not support the contention of the appellants that their possession became adverse in 1940 or any time between 1940 till filing of the suit. In the circumstances the second submission also deserves to be rejected. Considering that their are concurrent findings recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court under section 100 of the Code of Civil Procedure to disturb the findings of fact I find no merit in the instant appeal. The appeal, accordingly, fails and is dismissed as such.

(D.B.Bhosale, J.)